

Exhibit “D”

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SMARTPHONE TECHNOLOGIES LLC §

Plaintiff, §

v. §

**HUAWEI DEVICE USA INC. and
FUTUREWEI TECHNOLOGIES, INC.** §

Defendants. §

CIVIL ACTION No. 6:12cv245

ORDER

Before the Court is Plaintiff's Motion to Enforce the Court's Order Regarding Prior Art (Doc. No. 222) ("Motion"). Defendants responded (Doc. No. 226) and Plaintiff replied (Doc. No. 227). The Court held a hearing on April 24, 2014. Having considered the parties' arguments, the Motion is **GRANTED**.

A contention that a patent claim is obvious must be based on prior art and thus such a contention is a "prior art reference." The Court's November 15, 2014 Order (Doc. No. 211) ("Prior Art Order") limited the number of prior art references to 9 for the '459 Patent, 6 for the '275 Patent, and 6 for the '316 Patent.¹ Defendants' expert report contains references found in sections titled "The Prior Art" that presumably comply with the Prior Art Order.² Excerpts of Dec. 13, 2013 Invalidity Expert Report of Stephen B. Wicker, Doc. No. 222-2, Ex. A at 5, 10, 15, and 20. However, the "Obviousness" sections discuss potentially open-ended combinations of references in addition to catch-all obviousness arguments. *Id.* at 6, 11, 17, and 26. Accordingly, because portions of Defendants' expert report that discuss obviousness do not

¹ The '485 Patent is no longer being asserted.

² The Court notes the parties' dispute regarding Defendants' alleged seventh reference in its discussion of the '275 Patent. MOT. at 3 n.3; RESP. at 6 n.19. To prevent confusion and in the spirit of the Court's Order, Defendants are instructed to withdraw the footnote.

comply with the Prior Art Order, such portions are stricken and Defendants' expert may not testify to the conclusions therein.

In light of the parties' stipulation during the April 24, 2014 hearing, Plaintiff's Motion for Summary Judgment for Dismissal of Defendants' Counterclaim 16 (Doc. 276) is **DENIED AS MOOT**.
SIGNED this 19th day of December, 2011.

So ORDERED and SIGNED this 28th day of April, 2014.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE